

# FISCAL NOTE

**Bill #:** HB0482

**Title:** Change indemnification in insurance clauses for construction contracts

**Primary Sponsor:** Forrester, G

**Status:** Third Reading

Sponsor signature	Date	Chuck Swysgood, Budget Director	Date
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## Fiscal Summary

	<b><u>FY 2004 Difference</u></b>	<b><u>FY 2005 Difference</u></b>
<b>Expenditures:</b>		
General Fund	\$32,160	\$32,160
State Special Revenue	\$58,960	\$58,960
Federal Special Revenue	\$61,640	\$61,640
Other	\$152,240	\$152,240
<b>Revenue:</b>	\$0	\$0
<b>Net Impact on General Fund Balance:</b>	(\$32,160)	(\$32,160)

<input checked="" type="checkbox"/> Significant Local Gov. Impact	<input checked="" type="checkbox"/> Technical Concerns
<input type="checkbox"/> Included in the Executive Budget	<input checked="" type="checkbox"/> Significant Long-Term Impacts
<input type="checkbox"/> Dedicated Revenue Form Attached	<input type="checkbox"/> Needs to be included in HB 2

## Fiscal Analysis

### ASSUMPTIONS:

1. The estimated value of state construction contracts that are bid and awarded by the Department of Administration and the Department of Transportation is \$265,000,000 annually.
2. The Departments of FWP, DNRC, DEQ, Military Affairs and the Montana University System have construction projects that would be similarly affected, but the additional cost is not included in this fiscal note.
3. The proposal will apply to state construction contracts, although the state is not included in the definition of "owner" (see technical note # 1)
4. Passage of HB 482 will require the state to insure construction projects in a different manner. Instead of relying on coverage already provided by the contractor's general liability policies at no cost, the state will have to purchase owner's/contractor's protective liability insurance to limit the financial consequences of catastrophic contractor claims to the state. The cost of owner's/contractor's protective liability insurance will be \$0.80 to \$1.20 per \$1,000 of contract value (based on an informal survey conducted by Risk Management and Tort Defense of the Department of Administration).

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5. The incremental cost of owner's contractor's protective liability insurance annually in state contracts, therefore, is estimated at \$218,000 to \$318,000 with \$268,000 assumed for purposes of this fiscal note. It is assumed these additional costs will be funded 12 percent general fund, 22 percent state special revenue, 23 percent federal special revenue and 43 percent by other funds.
6. Owner's/contractor's protective liability insurance does not afford protection for completed operations. Therefore, the state has no coverage for large construction projects with latent defects. These costs could be hundreds of thousands of dollars or more and were not included in the fiscal note because they cannot be quantified.

**FISCAL IMPACT:****Construction Contracts (Primarily MDOT)**

FY 2004

Difference

FY 2005

DifferenceExpenditures:

Operating Expenses

\$268,000

\$268,000

Funding of Expenditures:

General Fund (01)

\$32,160

\$32,160

State Special Revenue (02)

58,960

58,960

Federal Special Revenue (03)

61,640

61,640

Other

152,240152,240

TOTAL

\$268,000

\$268,000

Revenues:

\$0

\$0

Net Impact to Fund Balance (Revenue minus Funding of Expenditures):

General Fund Revenue (01)

(\$32,160)

(\$32,160)

State Special Revenue (02)

(\$58,960)

(\$58,960)

Federal Special Revenue (03)

(\$61,640)

(\$61,640)

Other

(\$152,240)

(\$152,240)

**EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:**

1. Local government construction projects will be affected in a manner similar to state projects as noted above. Construction and litigation costs will tend to increase with the amount dependent on the volume of projects and local decisions on actions to mitigate financial risks.

**LONG-RANGE IMPACTS:**

1. Costs noted above will continue into the future. The magnitude will vary significantly with the value of affected construction projects.
2. Owner's/contractor's protective liability policy does not cover liability arising from work, once it is completed. Therefore, large construction projects with latent defects will not be covered.

**TECHNICAL NOTE**

1. The codification instructions place new Section 1 in Title 28, Chapter 2, part 21. This part defines "owner" to exclude the state. Yet new Section 1 includes a policy statement to the effect that contracts that violate Section 1 are "void as against the public policy of the state." Hence, the policy statement conflicts with Title 28, Chapter 2, part 21.